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County Waste of Ulster, LLC and Laborers International Union of North America, Local 108, AFL—CIO and Local 124, R.A.I.S.E., IUJAT. Cases 2—CA–37437 and 2–RC–22858

September 27, 2010

ORDER DENYING MOTION

By Chairman Liebman and Members Becker and Pearce

On August 10, 2010, the National Labor Relations Board, by a three-member panel, issued a Decision, Order, and Direction of Second Election in this proceeding, 1 affirming the judge's rulings, findings, and conclusions to the extent and for the reasons stated in the Board's earlier decision reported at 353 NLRB 842 (2009).² In its earlier decision, which was incorporated by reference in the Board's August 10, 2010 decision, the Board (a) found that the Respondent violated Section 8(a)(2) of the Act by allowing Local 124, R.A.I.S.E., IUJAT to distribute the Respondent's Christmas bonus to the employees; (b) directed a second election, finding that the Respondent engaged in objectionable conduct by granting the bonus to employees; and (c) severed and remanded to the judge his finding that the Respondent violated Section 8(a)(1) of the Act by granting the bonus on the grounds that no such violation was alleged.

Thereafter, on September 7, 2010, the Respondent filed a motion for reconsideration, rehearing, and/or reopening of the record. The General Counsel filed an opposition, and the Respondent filed a response to the General Counsel's opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Section 102.48(d)(1) of the Board's Rules provides that "[a] party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing or reopening of the record after the Board decision or order." As explained below, there has been no showing of extraordinary circumstances here.

In support of its motion, the Respondent first asserts that it is unclear whether the Board's August 10, 2010

decision addressed two aspects of the earlier decision: (a) the severance and remand of the judge's finding of an 8(a)(1) violation based on the grant of a bonus, and (b) the finding of objectionable conduct in the consolidated representation case, 2-RC-22858, as the case remanded from the Second Circuit concerned solely the 8(a)(2) violation). Contrary to the Respondent's contention, the Board's August 10, 2010 decision (entitled "Decision, Order, and Direction of Second Election") explicitly affirmed the judge's findings and adopted the judge's recommended order "to the extent and for the reasons" set forth in the Board's earlier decision, and "incorporated" that earlier decision "by reference." By so doing, the August 10, 2010 decision left no doubt as to its adoption of the judge's finding of objectionable conduct based on the Respondent's grant of the Christmas bonus and its severance and remand of the separate 8(a)(1) issue.³

The Respondent additionally asserts that the Board failed to consider its request that this case be reviewed by a panel that does not include the members who participated in the initial, two-member decision. The Respondent further contends that the Board decided this issue "apparently" without reviewing the Respondent's request for a different panel, as it was served on August 9, 2010 by overnight delivery and was electronically filed at about 9:15 a.m. on August 10, 2010. However, the Board specifically addressed this issue in footnote 3 of its August 10, 2010 decision, where it explained that it was following its "general practice in cases remanded from the courts of appeals" and was acting "for reasons of administrative economy" in assigning the case to the members who participated in the original decision. Significantly, the footnote further explained that "the Board members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision." County Waste, supra, 355 NLRB No. 64, slip op. at 1.

Accordingly, having duly considered this matter, we shall deny the Respondent's motion.

IT IS ORDERED that the Respondent's motion for reconsideration, rehearing and/or reopening of the record is denied.

¹ 355 NLRB No. 64.

² The earlier decision was issued by the two sitting members of the Board. Thereafter, on June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Sec. 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained.

³ With respect to the remanded 8(a)(1) finding, on July 24, 2009, the two sitting members of the Board issued a Supplemental Decision and Order, adopting the judge's findings on remand, which is reported at 354 NLRB No. 54. In light of *New Process Steel*, supra, we have reconsidered the issues raised in that decision and have reviewed the record in light of the exceptions and briefs, and adopt the administrative law judge's findings and recommendations on remand to the extent and for the reasons stated in the July 24, 2009 Supplemental Decision and Order, which is incorporated herein by reference.

Dated, Washington, D.C. September 27, 2010

Wilma B. Liebman,	Chairman
Craig Becker,	Member
Mark Gaston Pearce,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD